

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

DRAFT
10.9.15

Bill 2

LLS NO. 16-0286.01 Christy Chase x2008

COMMITTEE BILL

Colorado Health Insurance Exchange Oversight Committee

BILL TOPIC: "Federal Waiver Employer-sponsored Health Insurance"

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT THE COMMISSIONER OF**
102 **INSURANCE APPLY FOR A WAIVER OF CERTAIN REQUIREMENTS**
103 **OF THE FEDERAL "PATIENT PROTECTION AND AFFORDABLE**
104 **CARE ACT" TO ALLOW EMPLOYERS TO PROVIDE**
105 **CONTRIBUTIONS TO EMPLOYEES TO PURCHASE INDIVIDUAL**
106 **HEALTH CARE COVERAGE IN LIEU OF OFFERING**
107 **EMPLOYER-SPONSORED GROUP HEALTH CARE COVERAGE, AND,**
108 **IN CONNECTION THEREWITH, REQUIRING THE COMMISSIONER**
109 **AND DEPARTMENT TO DEVELOP AN OPTIONAL PROGRAM FOR**
110 **EMPLOYERS TO SHARE HEALTH CARE COVERAGE COSTS WITH**
111 **THEIR EMPLOYEES.**

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Colorado Health Insurance Exchange Oversight Committee.

The bill requires the commissioner of insurance (commissioner), with assistance from the department of health care policy and financing (department), to apply to the secretary of the federal department of health and human services for a waiver, as permitted under section 1332 of the federal "Patient Protection and Affordable Care Act" (ACA), to allow employers to provide monetary contributions to help employees purchase individual health care coverage rather than offering employer-sponsored coverage to employees. The commissioner, with assistance from the department, is to develop a health insurance shared responsibility program under which a large employer that opts to provide a minimum contribution to its employees to purchase individual health insurance would avoid paying a penalty under the ACA for failing to provide minimum essential coverage to its employees. The program would be available to all employers, regardless of size, and participation in the program would be optional for employers.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 10-16-143 as
3 follows:

4 **10-16-143. Application for federal waiver - employer**
5 **requirements under federal act - health insurance shared**
6 **responsibility program - reporting requirements - definitions.**

7 (1) THE COMMISSIONER, WITH ASSISTANCE FROM THE STATE
8 DEPARTMENT, SHALL APPLY TO THE SECRETARY FOR A STATE INNOVATION
9 WAIVER IN ACCORDANCE WITH SECTION 1332 OF THE FEDERAL ACT, 31
10 CFR PART 33, AND 45 CFR PART 155, TO ALLOW AN EXEMPTION FROM THE
11 EMPLOYER SHARED RESPONSIBILITY PAYMENT AND ANY OTHER RELEVANT

1 PROVISIONS OF THE FEDERAL ACT FOR EMPLOYERS THAT OFFER
2 EMPLOYEES MONETARY CONTRIBUTIONS TO ASSIST IN PURCHASING
3 INDIVIDUAL HEALTH BENEFIT PLANS THROUGH THE EXCHANGE TO COVER
4 EMPLOYEES AND THEIR FAMILIES INSTEAD OF OFFERING EMPLOYEES
5 MINIMUM ESSENTIAL COVERAGE UNDER A GROUP HEALTH BENEFIT PLAN
6 IN ACCORDANCE WITH SECTION 1513 OF THE FEDERAL ACT.

7 (2) (a) FOR PURPOSES OF APPLYING FOR THE STATE INNOVATION
8 WAIVER DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE
9 COMMISSIONER, WITH ASSISTANCE FROM THE STATE DEPARTMENT, SHALL
10 DEVELOP A HEALTH INSURANCE SHARED RESPONSIBILITY PROGRAM UNDER
11 WHICH A LARGE EMPLOYER MAY OBTAIN AN EXEMPTION FROM THE
12 EMPLOYER SHARED RESPONSIBILITY PAYMENT AND ANY OTHER RELEVANT
13 PROVISIONS OF THE FEDERAL ACT IF THE LARGE EMPLOYER PROVIDES ITS
14 EMPLOYEES MONETARY CONTRIBUTIONS THAT ARE SUFFICIENT TO ALLOW
15 EMPLOYEES TO PURCHASE HEALTH BENEFIT PLANS THROUGH THE
16 EXCHANGE TO COVER EMPLOYEES AND THEIR FAMILIES. SMALL
17 EMPLOYERS MAY PARTICIPATE IN THE PROGRAM AND OBTAIN EXEMPTIONS
18 FROM THE FEDERAL ACT, AS NECESSARY. PARTICIPATION IN THE PROGRAM
19 IS OPTIONAL FOR ALL EMPLOYERS.

20 (b) THE PROGRAM MUST SPECIFY THE CRITERIA FOR AN EMPLOYER
21 TO PARTICIPATE IN THE PROGRAM AND QUALIFY FOR AN EXEMPTION FROM
22 THE EMPLOYER SHARED RESPONSIBILITY PAYMENT OR OTHER
23 REQUIREMENTS OF THE FEDERAL ACT, WHICH CRITERIA MUST INCLUDE:

24 (I) THE MINIMUM CONTRIBUTION AMOUNT OR PROPORTION OF THE
25 PREMIUM AN EMPLOYER MUST PROVIDE ITS EMPLOYEES TO BE SUFFICIENT
26 TO ALLOW ITS EMPLOYEES TO PURCHASE COVERAGE THROUGH THE
27 EXCHANGE THAT:

1 (A) COMPLIES WITH THE COMPREHENSIVE COVERAGE
2 REQUIREMENT SPECIFIED IN SECTION 1332 (b) (1) (A) OF THE FEDERAL
3 ACT; AND

4 (B) IS AFFORDABLE, AS DETERMINED PURSUANT TO 26 U.S.C. SEC.
5 36B (c) (2) (C) AND SECTION 1332 (b) (1) (B) OF THE FEDERAL ACT;

6 (II) A REQUIREMENT THAT THE EMPLOYER OFFER A CONTRIBUTION
7 TO ALL EMPLOYEES, WHICH CONTRIBUTION MAY BE PRORATED FOR
8 PART-TIME EMPLOYEES.

9 (c) IN DEVELOPING THE PROGRAM, THE COMMISSIONER, WITH
10 ASSISTANCE FROM THE STATE DEPARTMENT, SHALL ENSURE THAT A
11 WAIVER OF THE EMPLOYER SHARED RESPONSIBILITY PAYMENT OR OF ANY
12 OTHER FEDERAL ACT PROVISIONS WILL NOT INCREASE THE FEDERAL
13 DEFICIT, AS PROHIBITED BY SECTION 1332 (b) (1) (D) OF THE FEDERAL ACT.
14 TO THAT END, THE PROGRAM SHALL INCLUDE MECHANISMS TO ENSURE
15 BUDGET NEUTRALITY, SUCH AS REDUCING THE AMOUNT OF OR
16 ELIMINATING THE PREMIUM TAX CREDIT UNDER SECTION 1401 OF THE
17 FEDERAL ACT OR COST-SHARING REDUCTIONS UNDER SECTION 1402 OF THE
18 FEDERAL ACT FOR WHICH AN EMPLOYEE MAY BE ELIGIBLE IF THE
19 EMPLOYEE RECEIVES AN EMPLOYER CONTRIBUTION THAT MEETS THE
20 REQUIREMENTS OF THE PROGRAM.

21 (d) THE PROGRAM SHALL INCLUDE, IF ALLOWED UNDER THE
22 FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND IF
23 BUDGET-NEUTRAL, THE ABILITY FOR AN EMPLOYER TO DEDUCT, AS
24 PREMIUM PAYMENTS, THE AMOUNT OF THE CONTRIBUTIONS THE EMPLOYER
25 MAKES FOR ITS EMPLOYEES TO PURCHASE INDIVIDUAL HEALTH CARE
26 COVERAGE.

27 (3) IF THE SECRETARY APPROVES THE WAIVER, THE

1 COMMISSIONER, WITH ASSISTANCE FROM THE STATE DEPARTMENT, SHALL
2 IMPLEMENT THE PROGRAM.

3 (4) (a) BEGINNING IN 2016, THE COMMISSIONER SHALL REPORT, AS
4 PART OF THE DEPARTMENT OF REGULATORY AGENCIES' "STATE
5 MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT
6 (SMART) GOVERNMENT ACT" HEARING REQUIRED BY SECTION 2-7-203,
7 C.R.S., ON THE COMMISSIONER'S PROGRESS IN SEEKING A WAIVER IN
8 ACCORDANCE WITH THIS SECTION AND, IF THE WAIVER IS APPROVED, ON
9 THE IMPLEMENTATION AND OPERATION OF THE PROGRAM.

10 (b) IF THE WAIVER IS APPROVED AND THE PROGRAM IS
11 IMPLEMENTED, THE COMMISSIONER SHALL INCLUDE IN THE REPORT AT
12 LEAST THE FOLLOWING:

13 (I) THE TOTAL NUMBER OF EMPLOYERS AND EMPLOYEES
14 PARTICIPATING IN THE PROGRAM EACH YEAR, SPECIFYING THE NUMBER OF
15 LARGE AND SMALL EMPLOYERS;

16 (II) THE AVERAGE CONTRIBUTION AMOUNT PER EMPLOYER PER
17 YEAR AND THE TOTAL AMOUNT CONTRIBUTED BY ALL PARTICIPATING
18 EMPLOYERS PER YEAR; AND

19 (III) A RECOMMENDATION AS TO WHETHER THE STATE SHOULD
20 APPLY TO THE SECRETARY TO CONTINUE THE STATE INNOVATION WAIVER;
21 EXCEPT THAT THE COMMISSIONER SHALL NOT INCLUDE A
22 RECOMMENDATION UNTIL THE PROGRAM HAS BEEN OPERATING FOR AT
23 LEAST THREE YEARS BUT LESS THAN FIVE YEARS.

24 (5) AS USED IN THIS SECTION:

25 (a) "EMPLOYER" MEANS A SMALL EMPLOYER OR A LARGE
26 EMPLOYER.

27 (b) "EMPLOYER SHARED RESPONSIBILITY PAYMENT" MEANS THE

1 ASSESSABLE PAYMENT AN EMPLOYER IS REQUIRED TO MAKE UNDER
2 SECTION 1513 OF THE FEDERAL ACT, AS CODIFIED IN THE FEDERAL
3 "INTERNAL REVENUE CODE OF 1986", AS AMENDED, 26 U.S.C. SEC.
4 4980H.

5 (c) "LARGE EMPLOYER" MEANS AN "APPLICABLE LARGE
6 EMPLOYER" AS DEFINED IN THE FEDERAL "INTERNAL REVENUE CODE OF
7 1986", AS AMENDED, 26 U.S.C. SEC. 4980H (c) (2).

8 (d) "PROGRAM" MEANS THE HEALTH INSURANCE SHARED
9 RESPONSIBILITY PROGRAM DEVELOPED BY THE COMMISSIONER, WITH
10 ASSISTANCE FROM THE STATE DEPARTMENT, IN ACCORDANCE WITH THIS
11 SECTION.

12 (e) "SECRETARY" MEANS THE SECRETARY OF THE UNITED STATES
13 DEPARTMENT OF HEALTH AND HUMAN SERVICES.

14 (f) "STATE DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH
15 CARE POLICY AND FINANCING CREATED IN SECTION 24-1-119.5, C.R.S.

16 (g) "STATE INNOVATION WAIVER" MEANS A WAIVER OF ONE OR
17 MORE REQUIREMENTS OF THE FEDERAL ACT AUTHORIZED BY SECTION 1332
18 OF THE FEDERAL ACT.

19 **SECTION 2. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.